IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

Tr.P(Crl.).No. 41 of 2007()

ST.719/2006 of J.M.F.C.-VI, TRIVANDRUM

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PETITIONER: ACCUSED

P.KUMARA SWAMY, PADMAKUMAR BHAVAN,
N.R.A.8, NILAMEL DESOM, NEYYATTINKARA,
THIRUVANANTHAPURAM.

BY ADV. SRI.B.S.SWATHY KUMAR

RESPONDENTS: COMPLAINANT & STATE

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1. M.ALOYSIUS, TREESIUS HOME,
N R A 14, NILAMEL, NEYYATTINKARA.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS TRANSFER PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 21/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Tr.P(Crl).No.41 of 2007

Dated this the 21st day of March, 2007

ORDER

The petitioner is the accused in a prosecution under Section 138 of the N.I Act. The respondent herein is the complainant. The case is now pending before the learned Judicial Magistrate of the First Class-VI, Thiruvananthapuram. The petitioner prayed before the learned Sessions Judge that the case may be transferred to the court at Neyyattinkara. That application was stoutly opposed by the respondent. The learned Magistrate, in these circumstances, rejected the prayer. Aggrieved by the said order, the petitioner has come before this Court.

2. The learned counsel for the petitioner submits that both parties are residing at Neyyattinkara going by the addresses shown in the complaint and that, in these circumstances, a direction for transfer would only advance the interests for both sides. The learned Magistrate did not look into the question of convenience of both sides, it is urged.

3. I find no merit in the prayer at all. Convenience cannot be ascertained merely by looking at the place of the permanent address shown in the complaint. It is evident that the respondent did not want the case to be transferred. In these circumstances, the prayer is not founded on mutual convenience acceptable to both parties.

4. There is no contention that the Court at Thiruvananthapuram is not the Court having territorial jurisdiction to deal with the matter legally. The only grievance is that the petitioner, an old person, will have to travel from Neyyattinkara to Thiruvananthapuram to conduct his case. That by itself cannot persuade the Court to order transfer. The interests of justice will be best served if the petitioner seeks exemption from personal appearance. I find no reason why such insistence on personal appearance can and must be made by a court when the prosecution is only under Section 138 of the N.I Act. I am, in these circumstances, satisfied that the petitioner can certainly apply before the learned Magistrate to seek exemption from personal appearance. His personal appearance need not be insisted by the learned Magistrate unless progress of the case demands such course.

5. This Transfer Petition is, in these circumstances, dismissed, but with the above observations.

(R.BASANT, JUDGE)

rtr/-